



**Republic v Njenga (Criminal Case E007 of 2024)
[2025] KEHC 9141 (KLR) (Crim) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE E007 OF 2024**

**KW KIARIE, J
JUNE 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEORGE MAINA NJENGA ACCUSED

JUDGMENT

1. George Maina Njenga is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on the 21st day of January 2024, at Githabai location in South Kinangop Sub County of Nyandarua County, murdered Wilson Muiruri Karanja.
3. On the 21st of January 2024, the deceased spent the entire day consuming alcohol, albeit intermittently. He left his home for the last time at around 9 p.m. and never returned. The next day, at midday, his nephew found him in a maize field, having sustained serious injuries. Although he was rushed to the hospital, he succumbed while receiving treatment. The accused was linked to his death, as he was the last person with him. He was also suspected of being involved in the death, as he was having an affair with the deceased's wife.
4. George Maina Njenga, the accused, denied involvement in the death of the deceased.
5. The issues for determination are:
 - a. How did the deceased meet his death?
 - b. Whether or not the accused was the perpetrator of the death of the deceased; and
 - c. If he was involved, whether the offence of murder was proved.



6. . There were no eyewitnesses to the death of the deceased; thus, the evidence against the accused is circumstantial. In the case of *Mohamed & 3 Others vs Republic* [2005]1KLR 722, Osiemo J., explained what circumstantial evidence is as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved.

7. The law regarding the application of circumstantial evidence in criminal cases is clearly and exhaustively articulated in the well-known and frequently cited case of *Rex vs Kipkering Arap Koske* and another [1949] EACA 135, the Court of Appeal held:

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

These two cases will guide me as I analyze the evidence adduced against the accused.

8. Gladys Wangui Nderitu (PW8) testified that the deceased left for a bar after having breakfast on 21 January 2024. He returned home for lunch while intoxicated. After sleeping, he left the house at about 4 p.m. for the bar. He returned around 9 p.m. for supper and then asked her for Kshs. 500, but she only had Kshs. 200 to give him. He then went back to the bar. Their son, Amos Karanja (PW1), confirmed that the deceased had asked for the money, but he was quarrelling.
9. PW8 provided evidence implicating the accused. Her testimony was that at approximately 7 p.m., the accused passed her house and told her to forget she had a husband. He swore that he would finish him off with the iron bar he possessed, as he continually insulted him in the bar. At about 10 p.m., the accused went to her house and confessed that he had killed her husband and thrown the body onto Baba Muraya's land. He was covered in blood on his face and clothes. He borrowed something to clean himself, and she gave him a pair of trousers.
10. The evidence of this witness is questionable. If the accused confided in her regarding his intentions toward her husband, any reasonable person would have expected her to report the threat to the authorities or her relatives. Furthermore, when the accused arrived at her home with blood splattered all over his body and clothes, her account states that she provided him with a cloth to clean himself. Her testimony presents her actions as though nothing had occurred. This is astounding.
11. She had another opportunity the following morning to inform her sister-in-law, Hellena Wangui, what she knew about her husband, what the accused had purportedly informed her, and the damning evidence she saw on him. Instead, she only reported that her husband did not return the previous night.
12. This witness fails to inspire confidence in her evidence. Rather, she raises suspicion about herself. Did she have a role in the killing, and could she be covering for the actual perpetrators?
13. PC David Wainaina (PW9) was the investigating officer. After PW8 had implicated the accused and informed him that the clothes he was wearing when he confessed to her to have killed her husband, he went to the house of the accused. He found the accused, but he did not recover any weapon upon searching his house. He collected a pair of blue jeans as had been described to him by PW8. It, however, looked clean and had no stains.
14. The officer did not mention the pair of trousers PW8 had said she had purported to have given to the accused to clean himself with the blood. This further raises eyebrows on the evidence of PW8.



15. The prosecution adduced “last seen with” evidence, albeit veiled. This was derived from the testimony of Hezekiah Kamau Waithaka (PW2), who was operating the 7UP bar on the relevant day. He stated that at approximately 8 p.m., the deceased and the accused left the bar together. The accused returned shortly thereafter, after about 15 minutes. The Court of Appeal in the case of *Kimani vs Republic (Criminal Appeal 41 of 2022)* [2023] KECA 1390 (KLR) held that:

The doctrine of ‘last seen alive’ is based on circumstantial evidence, where the law prescribes that the person last seen with the deceased before their death was responsible for his or her death, and the accused is expected to provide an explanation as to what happened.

16. This doctrine is inapplicable in this case, as the accused broke the “last seen with” chain within fifteen minutes. Secondly, according to PW8, his wife saw the deceased alive when he returned home for supper at around 9 p.m. Thereafter, he left after asking for money and did not return.
17. The prosecution’s case relied on an alleged illicit relationship between PW8 and the accused. The accused denied this, whereas PW8 spoke freely about it. She claimed that the accused sired her youngest child. This was suggested, albeit in a veiled manner, as the motive. In *Karukenya & 4 others vs R* [1987] KLR 458, it was stated that:

The prosecution is not under a duty to prove motive in so far as the duty to prove the charge against the accused person is concerned. The criminal responsibility of accused person on mens rea and actus reus are the great bulwarks of the rule of Criminal Law.

18. Though motive is not an ingredient of the offence of murder, the overreliance on it and the evidence of PW8, the investigating officer may have been diverted from pursuing the genuine perpetrator or perpetrators of the murder. Instead, he ended up chasing a red herring.
19. The defence of George Maina Njenga, when weighed against the evidence on record, is persuasive. The offence of murder has not been established against him. I acquit him and set him at liberty unless otherwise lawfully held.

DELIVERED AND SIGNED AT NYANDARUA THIS 27TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE

